



IN THE CHIEF MAGISTRATE'S COURT OF PALLISA
HOLDEN AT PALLISA

CRIMINAL CASE NO. PAL-00-CR-CO-528 OF 2022

(Arising from Butebo CPS SD/MCB No. 013 of 2022; RSA Pallisa Case No. 953 of 2022)

UGANDA **PROSECUTOR**
VERSUS

1. MUJJI PETER

2. KASAJJA PETER **ACCUSED**

BEFORE: HIS WORSHIP KYEMBE KARIM, MAGISTRATE

JUDGMENT

Introduction

A homestead deep in the village of Kalyante, a jerrican of local brew, and a suspicion that would not be quieted — from such humble and combustible ingredients has many a rural tragedy been brewed, and this case is no exception. It is a story, at bottom, of two brothers who believed, rightly or wrongly, that an older neighbour had designs on their mother's affections, and of the older neighbour who, on a December night in 2022, walked to their homestead merely to buy a drink and left it instead on a stretcher, his head laid open by a stick and a shattered brick. Whether the two brothers standing charged before this court were the hands behind that violence, or whether they are, as they insist, innocent men who have carried the burden of a case not of their making for close to four years, is the question this judgment must now answer.



The law does not concern itself with why men quarrel over affections, alcohol, or honour; it concerns itself only with whether a person was unlawfully struck, whether that striking caused him actual bodily harm, and whether the prosecution has proved, beyond reasonable doubt, that it was the accused before court who did the striking. It is to that narrow but weighty inquiry that the court now turns.

The Charge

The accused, MUJJI PETER ("A1") and KASAJJA PETER ("A2"), were jointly indicted on one count of Assault Occasioning Actual Bodily Harm contrary to Section 236 of the Penal Code Act. The particulars of the offence are that A1, A2, and others still at large, on the 6th day of December, 2022, at Kalyante village in Butebo District, unlawfully assaulted one Kankoli Elifazi thereby occasioning him actual bodily harm.

Both accused are peasants residing in Kalyante village, Manyobe Parish, Petete Sub-County, Butebo District, and are brothers. They were arraigned before this court on 22nd December 2022, at which stage a plea of not guilty was taken and recorded. The matter thereafter travelled through a long chain of mentions, adjournments and part-hearings extending from 2023 through 2026, a lapse of time this court returns to below.

Representation

The State was represented at the hearing by learned State Attorneys from the Office of the Resident State Attorney, Pallisa. The accused persons appeared and conducted their defence in person.



Case for the Prosecution

The prosecution called three witnesses in support of the charge.

PW1, Kankoli Elifazi, the complainant, is a 43-year-old peasant farmer of Bwakatikoro village, Kachocha Parish, Petete Town Council, Butebo District. He testified that he is a neighbour to both A1 and A2, that the two accused are brothers, and that all three of them are villagemates of long standing. He told court that on the night of 6th December 2022, at about 8:00 p.m., he went to the accused's home — a home he identified as belonging to one Tambaki Bosco, the father of the two accused — to buy local alcohol. He knocked on the door and A1 answered, inviting him to come closer and to come inside. As he turned his back, A2 emerged and attacked him, striking him on the back of the head with a stick and then with a brick. A1 then joined in, also using a stick to assault him. He testified that there was a solar light at the home which enabled him to see and recognise his assailants, that he was rendered unconscious, and that the accused left him where he fell. He stated that a third person, one Keba, was present during the assault. On regaining his senses, he made his way to the home of the area Vice-Chairperson, raised alarm, and was taken by his people to Butebo Health Centre IV for treatment before reporting the matter to Police, following which both accused were arrested — A1 at a conference and A2 at the trading centre, on the same day.

Under cross-examination by A1, PW1 maintained that A1 had been close to him, that there was light at the scene, and that A1 had in fact begged him for forgiveness after the assault. He added that he had raised alarm, but that a radio playing at the accused's home meant no one came to his aid. Under cross-examination by A2, PW1 was equally firm: he did not know precisely why A2 had assaulted him, but recalled that the brick used broke into pieces on impact, that



the accused's home was roughly a kilometre from his own, and that a witness had in fact seen A2 attacking him.

PW2, Keba Isiah, an adult peasant farmer of Kyemanniswata village, Kachocha Parish, Petete Town Council, Butebo District, and by his own account a person with no prior quarrel with either accused, testified that on the evening of 6th December 2022, at about 6:30 p.m., he had gone to Tambaki's home to drink alcohol together with a number of villagemates, among them the father of the accused. He stated that the complainant had come asking to buy alcohol and was refused, after which a commotion broke out. He testified that he heard an alarm, went to the scene, and — aided by a solar light — saw both A1 and A2 beating the complainant with bricks for a period of about thirty minutes. He observed injuries to the complainant's upper eye and blood oozing from his head, though he did not intervene to rescue him. He later visited the complainant in hospital, where the complainant told him he had almost been killed. PW2 was subsequently called upon to report the matter to Police and confirmed that the accused were arrested on a market day at the trading centre, in his presence. He maintained under cross-examination that he had been drinking together with the accused's father that evening, that other persons present had been seated separately, and that he had merely assisted the complainant to report the matter to Police — a position he did not depart from even when pressed by each accused in turn.

PW3, Nalubwama Shafa, a Medical Clinical Officer of five years' standing attached to Butebo Health Centre IV, testified that she held a Diploma in Clinical Medicine and Community Health obtained in June 2020, and that she did not know the complainant or either accused before this case. She testified that the complainant was brought to her with Police Form 3, that she personally examined



him, and that she completed, signed and stamped the form in her own handwriting, which she identified in court. She told court that on examination on 12th December 2022, the complainant reported having been assaulted on 6th December 2022, and that she found a stitched cut wound on the left parietal region (2cm x 0.2cm), soft tissue injury to the occiput (4cm x 2cm), soft tissue injuries to the back (12cm x 10cm), a soft tissue injury to the buttocks (1cm x 6cm), a bruise to the left scapular region (0.2cm x 0.5cm), and a soft tissue injury to the lower right ribs (1cm x 5cm). She assessed the injuries as approximately six days old — consistent with the alleged date of assault — and opined that they were caused by a blunt object, specifically a stick and a brick, as reported to her. She classified the injuries as amounting to "Harm" within the meaning of the Police Form. The Police Form 3 was tendered and admitted in evidence without objection from either accused as Exhibit P.Ex.2. Under cross-examination by A1, PW3 maintained that she had only examined the complainant and recorded what she found; she could not, and did not purport to, identify who had caused the injuries. A2 did not cross-examine her.

At the close of the prosecution case, the court found that a prima facie case had been made out against both accused persons sufficient to require them to be put to their defence, and accordingly placed each accused on his defence.

Case for the Defence

DW1, Mujji Peter (A1), a 28-year-old peasant farmer of Kalyante village, Manyobe Parish, Petete Rural Sub-County, Butebo District, testified in his defence that he did not know why he had been charged, that he had merely seen the Police arrest him and take him to prison, and that he knew the complainant only as a person residing in a neighbouring village. He denied any grudge between himself



and the complainant. Under cross-examination, he stated that he did not know his own date of birth, that he had stopped school in Primary Four, that he was a farmer, and that he was at home and nothing happened on the material day. He offered no explanation, however, as to how the complainant came by his injuries, stating only that he did not know.

DW2, Kasajja Peter (A2), an 18-year-old herder and peasant farmer of Manyowe village, Kalyante Sub-County, Petete Sub-County, Butebo District, and a younger brother to A1, testified that he did not know his year of birth and held no national identification. He stated that on 6th December 2022 he saw nothing, that he had never assaulted the complainant, and that although he knew the complainant as a person seen at their home, they were not neighbours. He denied any grudge with the complainant. Under cross-examination, he maintained that he had never beaten the complainant — nor had his father — and confirmed only that he had been arrested and taken to the Central Police Station, professing no knowledge of any grudge between the parties.

The Law

It is trite that in all criminal prosecutions, the burden of proving the guilt of an accused person lies on the prosecution throughout, and never shifts to the accused, save in limited statutory exceptions inapplicable here. That burden must be discharged to the standard of proof beyond reasonable doubt (**Woolmington v DPP [1935] AC 462; Sekitoleko v Uganda [1967] EA 531**). An accused person has no obligation to prove his innocence; it suffices for him to raise a doubt on the prosecution case.

Section 236 of the Penal Code Act creates the offence of Assault Occasioning Actual Bodily Harm. To secure a conviction, the prosecution must prove, beyond



reasonable doubt: (i) that there was an assault, that is, an unlawful application of force to the person of another, or an act or gesture which caused the victim to apprehend the immediate application of such force; (ii) that the assault occasioned the victim actual bodily harm, meaning harm calculated to interfere with the health or comfort of the victim, which need not be permanent but must be more than merely transient or trifling (**R v Donovan [1934] 2 KB 498**, applied in this jurisdiction); and (iii) that it was the accused, and no other, who unlawfully occasioned that harm — the burden being on the prosecution to place the accused squarely at the scene as an active participant in the assault, whether directly or through a common intention shared with another (Section 20, Penal Code Act).

Ingredients of the Offence

It follows from the above that, for a conviction to be entered against either accused, the prosecution must prove each of the following ingredients beyond reasonable doubt:

- (a) That the complainant, Kankoli Elifazi, was assaulted on the material day;
- (b) That the assault occasioned him actual bodily harm; and
- (c) That it was A1 and/or A2 who unlawfully occasioned that harm.

Evaluation of the Evidence on Each Ingredient

Ingredients (a) and (b): whether there was an assault, and whether it occasioned actual bodily harm. On this limb, the evidence leaves little room for doubt. PW1 gave a coherent and consistent account of being struck with a stick and a brick and rendered unconscious. His account was corroborated in material particulars



by PW2, an independent witness who had no discernible interest in the outcome of the case — indeed, he had been drinking that evening in the company of the accused's own father — and who described, with the aid of solar lighting, having personally observed both accused beating the complainant with bricks for a sustained period of about thirty minutes, and having seen blood oozing from the complainant's head. This eyewitness account was in turn corroborated by the medical evidence of PW3, whose Police Form 3 (Exhibit P.Ex.2) was admitted without objection from either accused and therefore stands as unchallenged expert evidence. That evidence documented a stitched cut wound to the head, soft tissue injuries to the back, buttocks and ribs, and a bruise to the scapular region, assessed as approximately six days old at the time of examination on 12th December 2022 — a timeline entirely consistent with an assault on 6th December 2022 — and attributed to blunt trauma consistent with a stick and a brick. The injuries were classified as "Harm", satisfying the threshold of actual bodily harm under Section 236. The court accordingly finds ingredients (a) and (b) proved beyond reasonable doubt.

Ingredient (c): whether A1 and/or A2 were responsible. This is the ingredient on which the defence joined battle, and it is the ingredient to which the court has given its most careful attention. Three features of the evidence persuade the court that the prosecution has discharged its burden as against both accused.

First, this is not a case of fleeting or mistaken identification of a stranger in the dark. PW1 knew both accused before the incident as neighbours and long-standing villagemates, and it was to their family home that he had gone, by his own account, to buy alcohol. He named A1 as the one who invited him closer before A2 struck him from behind, and named A1 as thereafter joining the attack. Recognition of persons already well known to a witness, under conditions of solar



lighting he described in some detail, is inherently more reliable than the identification of a stranger under difficult conditions, and the court so treats it.

Second, PW1's account was not left to stand alone. It found substantial corroboration in the independent testimony of PW2, who was not merely repeating what he had been told but who described what he says he personally witnessed — both accused beating the complainant with bricks — from a vantage point he explained, and in circumstances (having been drinking with the accused's own father moments earlier) which gave him no evident motive to falsely implicate either accused. Corroboration of this kind, from a witness independent of the complainant and unconnected to any prior dispute, materially strengthens the reliability of the identification evidence.

Third, the defence offered by each accused amounted, in substance, to a bare denial. A1's assertion that he was at home and that "nothing happened that day" was not supported by any alibi witness, any account of who else was present with him, or any challenge to PW2's evidence that A1 was in fact at the very home where the assault occurred, drinking with others including his own father. A2 likewise offered a general denial without engaging the specifics of PW2's eyewitness account of him wielding a brick. Neither accused cross-examined PW3 in a manner that cast doubt on the medical findings; indeed, A2 did not cross-examine her at all. A bare denial, unaccompanied by any evidence capable of raising a genuine doubt on a corroborated prosecution case, does not avail an accused person.

The court is alive to two matters that merit candid acknowledgment, though neither, in the court's assessment, is sufficient to disturb the above findings. The first is a minor inconsistency in the record as to the precise date on which PW1 said he went to buy alcohol, which appears at one point to have been recorded as



differing from the 6th December 2022 date borne out by the charge sheet and the medical evidence; time not being of the essence of this charge, and there being no alibi defence raising the question of date as material, this discrepancy is treated as an inconsequential slip rather than a substantive contradiction. The second is the considerable delay of close to four years between arraignment in December 2022 and judgment in 2026, occasioned by repeated adjournments, the complainant's intermittent absence, and administrative interruptions including the illness of the area chairperson. While such delay is regrettable and falls short of the standard of expeditious trial to which every accused person is entitled, it is a matter properly reflected in sentencing rather than one which, of itself, undermines the cogency of evidence that has otherwise withstood the scrutiny of cross-examination.

Having considered the evidence as a whole, the court finds that the prosecution has proved, beyond reasonable doubt, that A1 Mujji Peter and A2 Kasajja Peter each unlawfully assaulted the complainant, Kankoli Elifazi, and thereby occasioned him actual bodily harm, as charged.

Finding and Order

For the reasons set out above, the court finds A1, Mujji Peter, and A2, Kasajja Peter, ***each GUILTY of Assault Occasioning Actual Bodily Harm contrary to Section 236 of the Penal Code Act, and each is accordingly CONVICTED on the charge as indicted.***

The accused persons are to be accorded their right of allocutus, and the matter shall be fixed for a hearing on mitigation and sentencing, at which the State and the convicts shall each be heard, including on the matter of the delay this case has suffered in coming to trial.



Right of appeal explained.

Dated, signed and delivered this ___10TH___ day of ____SEPTEMBER____, 2026.

A handwritten signature in black ink, appearing to be "KYEMBE KARIM", is written over a dotted line.

KYEMBE KARIM

MAGISTRATE

CHIEF MAGISTRATE'S COURT OF PALLISA